

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34**

S.T.A.R. INC., LIGHTING THE WAY...

Employer ¹

and

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 371, AFL-CIO, CLC

Petitioner

Case No. 34-RC-1820

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Employer, a Connecticut not-for-profit corporation with approximately 21 facilities located throughout the greater Norwalk area, provides day and residential services and programs to persons with developmental disabilities. The Petitioner seeks to represent a unit of approximately 60 assistant residential managers, support counselors, residential instructors,

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The name of the Employer appears as amended at the hearing.

overnight support instructors, relief instructors, job coaches, and production instructors. The Employer contends that that the petitioned-for unit is inappropriate, and that the only appropriate unit must include all of its approximately 120 employees. Thus, the Employer, contrary to the Petitioner, would also include program specialists, program coordinators, community services instructors, community support specialists, drivers, the shipping and receiving clerk, facilities maintenance employees, teaching assistants, the social worker intern, recreation employees, respite employees, clerical employees, administrative assistants, the assistant director of employment services, and professional employees. The Petitioner is willing to proceed to an election in any unit directed herein. The record reveals no history of collective bargaining between the Petitioner and the Employer regarding the petitioned-for unit.

Background

The Employer came into existence in its present form in October 1999 when S.T.A.R. Residential Services merged into S.T.A.R., Inc. Prior to the merger, S.T.A.R., Inc. operated a respite program at Founders Cottage. The respite program operated similar to a group home by providing temporary relief to the primary caregivers of persons with developmental disabilities. S.T.A.R. Residential, in contrast, operated a number of residential facilities where developmentally disabled persons could live and be trained to work in the community. As a result of the merger, the Employer now provides occupational, physical and speech therapy, special education, family training and support, social work, interpreter services, and job coaching services in residential, day and employment settings to persons with developmental disabilities and their families.

The Employer's main office and place of business, known as S.T.A.R. Center, is located at 182 Wolfpit Avenue in Norwalk, with an additional administrative office located in Wilton. The Employer's nine residential facilities are located in Westport (Kagey House), Weston (O'Brien House), Wilton (Wilton Crest), and Norwalk (Founders Cottage and Stoler House, located next to the S.T.A.R. Center; Ryan House, Shiver's House, Murray Street, Norwest Apartments, and Horizons Apartments). The Employer's other facilities, all of which are located in Norwalk, include the Training and Employment Coop (TEC); Rubino Center, which provides early intervention services for children from birth to age three, and family support services; Senior Program, which provides support services for developmentally disabled seniors over age 55; Community Experience Program II (CEP II), which provides job training and supervision to eight clients; Butler Street, which provides job training and supervision to eight clients; and Riverview, which provides job training and supervision to six to eight clients. The Employer also arranges "employment enclaves", at which the Employer's clients are employed by private corporations,

including PROMAR, Concord Industries, and The Village Market. Finally, the Employer provides support services to clients at an unspecified number of privately owned and rented apartments.

Primarily responsible for the Employer's overall operations is Executive Director Katie Banzhaf, whose office is located at the S.T.A.R. Center. Reporting directly to Banzhaf are the Directors of Residential Services, Operations, Employment Services, Rubino Center, Family Support Services, Development, Human Resources, and Financial Services. Reporting to their respective Directors are the Family Supported Manager, the Community Services Manager, the Transportation Coordinator, the Supported Employment Manager, the Program Manager, the Food Services Coordinator, the Supported Employment/Crew Coordinator, Employment Managers, the Residential Service Coordinator, and the Supported Living Coordinator. There are also a total of seven House Managers who are assigned to the Employer's residential facilities but report to the Residential Service Coordinators. The parties stipulated that all of the above individuals are supervisors within the meaning of Section 2(11) of the Act.

Under state law, the Employer is required to develop a plan of service (herein referred to as the plan) for each person receiving services from the Employer (herein called clients). The plan must identify the support and services required by each client, and describe the means and manner by which those services will be provided. Each plan is developed by a team consisting of those individuals who are involved in the client's life, including a number of different employees, the client, and the client's family. All employees who work with the client are responsible for implementing and administering the client's plan.

Since the merger described above, the Employer has implemented uniform pay, benefits and employment policies for all employees. Thus, the minimum starting wage for all employees is \$10.00 per hour, and all employees receive the same fringe benefit package. All employees are subject to the same employment policies, and attend general staff meetings. In addition, all open positions are posted at all of its facilities, and any employee may apply for any open position.

The Petitioned-for Unit

As noted above, the Petitioner seeks to represent a unit consisting of the assistant residential managers, support counselors, residential instructors, overnight support instructors, relief instructors, job coaches, and production instructors. As noted in more detail below, these employees work with both residential and day clients at a number of different Employer facilities.

The 13 assistant residential managers (also referred to as assistant house managers) are assigned to the Employer's residential facilities, and report directly to the House Manager of

their assigned facility. Their job duties are to oversee the daily operation of their facility and assist in its day-to-day activities. This includes assisting residents in getting to work, taking them to check their mailboxes or to make copies of documents, and teaching them various life tasks. In addition, they are to assist in ensuring that all goals and objectives of the client and the Employer are enhanced through the operation of the residence. They are trained to deal with the occasionally violent behavior of the residents, and they participate in formulating and administering each resident's plan. Their rate of pay ranges from \$12.00 to \$16.00 per hour.

There are 33 residential instructors who are each assigned to a particular residential facility, as well as an unspecified number of "floaters" who are assigned to more than one facility. They report directly to the House Manager of their facility. The residential instructors implement each resident's plan by tending to their daily needs, such as getting dressed and going to work. Other duties include maintaining each clients' work records, providing transportation as needed, and documenting medication and treatments. Their rate of pay ranges from \$10.00 to \$14.25 per hour. There are also 10 relief instructors who report directly to the Director of Residential Services. Although not entirely clear, it appears that an unspecified number of these employees occupy other positions in the petitioned-for unit, and that they are assigned for unspecified periods of time to a particular residence which needs additional employee support. While assigned to a residence, the record indicates that they perform the same duties as the residential instructors.

The approximately 14 overnight support instructors (also known as overnight residential instructors) are each assigned to a particular residential facility where they implement each resident's plan by tending to their nighttime needs. This includes preparing them for sleep by helping them shower or bathe, change into nightclothes, and brush their teeth. They also provide transportation to clients and residents as needed, and are responsible for documenting medication and treatments. They report directly to the House Manager of the facility. Their rate of pay ranges from \$10.00 to \$12.50 per hour.

There are eight full-time support counselors and an unspecified number of part-time relief support counselors. They are responsible for implementing each day client's plan by assisting the clients in their daily tasks at the particular location where the client lives.² Thus, the support counselors teach and assist the clients in various life tasks, such as cooking, and provide transportation assistance as needed. In addition, support counselors attend support

² Clients can live under a "supported living" or "self-determined" arrangement. In a self-determined living arrangement, the State of Connecticut provides funds directly to the client who in turn hires the Employer to provide needed support. In a supported living arrangement, the Employer receives funding directly from the State of Connecticut for the services it provides to the client.

meetings, maintain a home-like atmosphere, administer medications, participate in required training and assist residents in management of personal funds. All support counselors report to the Supported Living Coordinator, who in turn reports to the Director of Residential Services. Their rate of pay ranges from \$12.00 to \$14.00 per hour.

With regard to the general category of job coaches, the record reflects that there are two job developers, 14 job coaches, and 10 job site coaches. Job developers match clients seeking employment with employers in the community. This includes assisting the client in the application and interview process; maintaining written and personal contact with employers; developing, implementing, and reviewing placement plans; and maintaining records. The job developers also assist the program coordinators in all facets of their position. These employees work from 8:30 a.m. to 4:00 p.m., though evening hours are sometimes required. Their rate of pay is \$12.40 per hour.

Job coaches are responsible for providing an array of daytime support to persons assigned to their team. Primary support focus is on securing and maintaining employment. This includes an individualized approach to job development and training. Job coaches may provide other support to clients in areas such as securing and maintaining volunteer positions, educational experiences, and recreational pursuits. Non-work related support is also provided to clients who are temporarily unemployed or only work part-time. Essential duties include completion of individual client profiles, assisting in individualized job development, follow-up job support and record keeping. These full time positions require flexible hours though the typical workday is 8:30 a.m. to 4:00 p.m. The job coaches are paid \$10.45 per hour.

Job site coaches have slightly different responsibilities depending on their work site. They all report to the Supported Employment Manager. The job site coach for the "S.T.A.R. cleaning crew", who also reports to the Facilities Manager, supervises those clients who work in the Employer's maintenance program. The job site coach for Concord Industries, an employment enclave, supervises those clients working at Concord Industries. This includes the assignment of work, medical supervision, and quality control. The job site coach for the "various job crews" supervises clients who perform a variety of odd jobs, such as deliveries, pick-ups, and yard cleanups. The job site coach for The Village Market supervises clients who are employed at The Village Market, where the clients primarily prepare sandwiches. The job site coach for "We Cut Grass" supervises clients who perform landscaping work. The job site coach for PROMAR, an employment enclave, supervises clients at that location. The job site coach for the S.T.A.R. cafeteria assists clients in the preparation of meals for the cafeteria and training clients in food preparation techniques. There are also an unspecified number of job site coach

“floaters” who must be familiar with all of the job sites and be able to assume the role of any of the other job site coaches should the need arise. All job site coaches are paid at a rate of \$10.25 per hour.

The approximately 10 production instructors work in the Sheltered Workshop located at the S.T.A.R. Center. They report to the Supported Employment Manager, who in turn reports to the Director of Employment Services. The Sheltered Workshop subcontracts with local businesses to bring work into the workshop to be performed by clients, such as labeling, collating, filing, and basic production and assembly. The production instructors are responsible for implementing and maintaining the plan for each client employed in the workshop by teaching the clients how to do the work, overseeing the quality of work performed, recording time and attendance, and recording production to ensure that the clients are paid properly. There is one senior production instructor who provides one-on-one and group instruction to clients, and expedites orders by assisting with job set-up, time studies, and quality control. Their rate of pay is \$10.00 per hour.

The record reflects that the following employees in the petitioned-for unit have permanently transferred between jobs in that unit: four job coaches were formerly production instructors, and one production instructor was formerly a job coach. There have also been transfers between residential instructors and production instructors; assistant residential managers and residential instructors; relief instructors and residential instructors; relief instructors and support counselors; and residential instructors and support counselors. In addition, several employees hold more than one position in the petitioned-for unit, including a production instructor who also serves as a support counselor and a support counselor who serves as a relief instructor.

The Proposed Inclusions

As noted above, the Employer seeks to include the following additional positions in the petitioned-for unit: program specialists, program coordinators, community services instructors, community support specialists, drivers, the shipping and receiving clerk, recreation supervisors, weekday and Saturday recreation instructors, respite employees, clerical employees, administrative assistants, facilities maintenance employees, teaching assistants, the social worker intern, the assistant director of employment services, and professional employees.

There are three program specialists, two with offices at the S.T.A.R. Center and one at the Wilton office. Program Specialists serve as the focal point for the design, implementation and maintenance of each client’s plan. Thus, they work directly with the client and the client’s family to gather all relevant data and information about the client, develop the plan in

conjunction with other unit employees, train unit employees on implementing the plan, and ensure that the plan is properly implemented. They report directly to the Program Manager, who serves as a liaison to the Director of Residential Services. Their rate of pay ranges from \$14.50 to \$19.59 per hour.

There are eight program coordinators who generally assist in the implementation and maintenance of each client's plan. They report to the Employment Managers, who in turn report to the Director of Employment Services. The program coordinators provide an array of daytime support to persons assigned to the teams, such as assisting in the developing and implementation of individual programs and behavior plans including working collaboratively to complete individual profiles. Program coordinators act as facilitators/team leaders in regards to problem solving, progress reporting, evaluation, and communication. They assist the team in sharing ideas, opinions, and concerns while working to achieve a consensus.

There are two community services instructors who report to the Community Services Manager. Their duties include encouraging integrated participation by clients in social and recreational leisure-time activities, such as escorting senior clients to community activities, referring social and behavioral problems to the appropriate supervisors, encouraging clients to utilize skills and abilities, assisting in medical emergencies, and monitoring clients and assisting in the implementation of their plans.

There are approximately 17 community support specialists who provide support services to day clients with respect to their community, leisure, recreation and educational activities. They report to an Employment Manager, who in turn reports to the Director of Employment Services. Although not entirely clear, it appears that most of these employees work either at the Senior Program, CEP II, or TEC. Their responsibilities include coordination with team members to identify individualized, meaningful, community-based activities for clients who are looking for work or work part-time, and to provide support and training to the client in order to maximize community participation, relationships and meaningful contributions. Their rate of pay is \$10.45 per hour.

There are two full-time and an unspecified number of part-time drivers who are responsible for the safe, courteous, and reliable transportation of clients between their residence and their jobs or other community activities. They report to the Transportation Coordinator who in turn reports to the Director of Human Resources. The record reveals that that all of the part-time drivers also fill other positions with the Employer, including production instructors, community support instructors, community support specialists, job coaches, and the shipping and receiving clerk. Drivers must have a Connecticut driver's license, a public service

license, and a driving record containing less than four points. Their rate of pay is \$10.00 per hour.

The shipping & receiving clerk works in the S.T.A.R. Center's stockroom which supports the workshop at that location. He reports directly to the Supported Employment Manager, who in turn reports to the Director of Employment Services. He is responsible for maintaining the stock room and for inventory control, conducting quality control review of the client work product, and the pick-up and delivery of work. Clients in the workshop occasionally assist him in his work. Although not entirely clear, it appears that he works in conjunction with the production instructors described above. The record does not reflect his rate of pay.

There are approximately four recreation employees who report to the Community Services Manager and oversee recreational activities provided to clients. The record does not reflect where they work. One of the recreation employees oversees the "travel club" by checking head counts, driving, responding to any emergencies, and ensuring client socialization. The Saturday recreation employee oversees Saturday recreation programs as assigned by the Recreation Coordinator, by ensuring the safety of all participants and volunteers in the program. This includes taking "head counts", serving as a role model, driving, helping clients change clothes in locker rooms, and responding to any emergencies. The record does not reflect the particular job duties and responsibilities of the other recreation employees. Their rate of pay ranges from \$10.00 to \$10.50 per hour.

There are approximately 15 respite employees, including the respite supervisor, the respite coordinator, the respite counselor, four respite support counselors, and an unspecified number of respite relief counselors. Respite employees generally provide support to a client's family by temporarily relieving the client's normal caregiver, which is usually a family member. This temporary relief is provided in the client's own home or apartment, or at one of the Employer's facilities such as Founders Cottage. The respite employees, with the exception of the respite supervisor, report to the Family Support Manager, who in turn reports to the Director of Family Support Services. The record does not reflect the particular job duties and responsibilities of the respite employees, except for the respite supervisor. With regard to the respite supervisor, the record reflects that she reports directly to the Respite Manager, and is responsible for supervising and training the clients who come to the Founders cottage for respite services. Responsibilities include coordinating and transporting clients to recreation events and appointments, assisting in the development of personal care and hygiene habits as

well as the acquisition of skills for more independent living, and monitoring the physical environment of the home.³

There are six clerical employees located at the S.T.A.R. Center, all of whom report to the Director of Financial Services. They are: the accounts payable clerk, the accounts receivable clerk, the bookkeeper payable/receivable clerk, the participant remuneration clerk, the resident benefits coordinator, and the receptionist. There are two other clerical employees: a receptionist who works at the Wilton office, and a participants benefits coordinator at an unidentified location who reports to the Employment Manager. The accounts payable clerk is responsible for handling accounts payable and the employee payroll, and serves as a back-up for client payroll. The accounts receivable clerk is responsible for handling accounts receivable and serves as a back-up for both the employee and client payroll. The bookkeeper payable/receivable clerk is responsible for general bookkeeping, accounts payable, accounts receivable, closing of S.T.A.R. Residential books through the completion of final audits, and backup for participant remuneration. The participant remuneration clerk is responsible for the client payroll, which includes collecting time sheets, data entry, proofing the accounts, and issuing paychecks to working clients. The participants benefits coordinator administers government benefits received by clients, such as social security. The receptionists greet visitors, answer the phones, open and distribute mail, record donations, and type.

There are approximately six administrative assistants who work at the S.T.A.R. Center, the Wilton Office, the TEC, and other unidentified locations. The administrative assistants report to one or more directors. Thus, the administrative assistant who reports to the Executive Director provides administrative support to the Executive Director, the Director of Development, the S.T.A.R. Foundation, the Program Managers, and program specialists. The administrative assistant responsible to the Director of Residential Services provides administrative support for the Director of Residential Services. The administrative assistant at the Wilton Office is also responsible to the Director of Residential Services, and is a liaison with the Director of Human Resources for tracking training on the computer. This individual is responsible for answering the phones, welcoming and directing visitors, opening and distributing the mail, computer input, and secretarial support for staff assigned through the Wilton office. The administrative assistant to the Employment Manager is responsible for answering phones, welcoming and directing

³ There is no evidence that the respite supervisor possesses any of the indicia of supervisory status under Section 2(11) of the Act, nor does any party contend that the respite supervisor is a supervisor under the Act.

visitors, opening and distributing mail and computer input. The administrative assistant to the Director of Human Resources is responsible for typing and purchasing.

There are two facilities maintenance employees who perform maintenance and repair services at the Employer's facilities. This includes monthly inspection and preventative maintenance including tasks such as maintenance of tools and equipment as well as implementation of OSHA practices. They report to the Director of Operations.

The two teaching assistants report to the Director of the Rubino Center but are responsible for carrying out tasks assigned by the teachers, therapists, or directors. They work with children under the direction of the teachers, attend staff meetings and conferences, and prepare classroom materials as well as maintain cleanliness.

The social worker intern provides family support and family access to community resources, including forming playgroups, parent support groups, assisting in the transition to school, assisting in accessing further services in the community and providing support services to employees. The social worker intern reports to the Director of the Rubino Center.

There is an assistant director of employment services who reports to the Director of Employment Services. This employee acts in the capacity of the Director in her absence, and assists the Director in areas such as quality assurance, new program development, program implementation and evaluation, and training, and covers for absent managers. The rate of pay is between \$20.00 and \$26.25 per hour.

With regard to the professional employees,⁴ there are four physical therapists, three occupational therapists, and five speech & language pathologists, all of whom work at the Rubino Center. Their job descriptions are nearly identical, requiring them to perform such tasks as serving on interdisciplinary teams, preparing individual education programs, providing training and therapy to clients, evaluating new clients, preparing home programs and explaining and demonstrating techniques. The record clearly reflects, however, that the Employer considers these 12 individuals to be "independent contractors". In this regard, they submit a bill to the Employer for their hours worked, and the Employer makes no deductions from their pay nor prepares a W-2 form at the end of the year.

The remaining professional employees include three registered nurses and two special education teachers. One of the registered nurses, who reports to the Director of Employment Services, is responsible for monitoring the health of all clients in the Employer's programs and maintaining contact with health professionals in the community in order to ensure the efficient

⁴ The parties stipulated that each of the professional employees are professional employees within the meaning of the Act.

delivery of health care for the Employer's clients. Other duties include overseeing the administration of medication and first aid, communicating health information to employees, maintaining records, reviewing incident reports, supervising medical and dental visits, providing consultations as a resource to the staff, families and clients, and providing health screening. The two other registered nurses are employed as primary care nurses and report to the Director of Residential Services. They are responsible for developing and monitoring the implementation of nursing care plans for clients in the Employer's residential facilities and day programs. They routinely evaluate each resident's physical condition and medical needs, assess issues and complaints, and act as a liaison with physicians, hospitals, labs, psychiatrists and other health care providers. Their rate of pay ranges from \$20.00 to \$27.00 per hour. The special education teachers work at the Rubino Center teaching clients in the Birth to Three program. They participate on interdisciplinary teams, prepare family service plans, supervise teaching assistants, and design and implement special instruction plans. They must have a degree in special education, be certified, and have prior experience teaching special education.

The record reflects that the following employees in the petitioned-for unit formerly held positions which the Employer seeks to include in the unit: a production instructor and a support counselor who were formerly community support specialists. The record further reflects that the following employees who the Employer seeks to include in the unit formerly held positions in the petitioned-for unit: a respite support counselor who was formerly a residential instructor; a respite support counselor who was formerly an overnight instructor; the shipping and receiving clerk who was formerly a production instructor; a community support specialist who was formerly a support counselor; two program coordinators who were formerly job coaches; and a community support specialist who was formerly a support counselor. In addition, two employees presently hold positions both in the petitioned-for unit and in the inclusions sought by the Employer.

In *Hillhaven Convalescent Center of Delray Beach*, 318 NLRB 1017 (1995) and *Lincoln Park Nursing and Convalescent Home, Inc.*, 318 NLRB 1160 (1996), the Board reaffirmed its use of an "empirical community of interest test" for determining the appropriateness of bargaining units in non-acute care health care institutions. Under this test, which was first enunciated by the Board in *Park Manor Care Center*, 305 NLRB 872 (1991), the Board considers community-of-interest factors, as well as those factors considered relevant by the Board in its rulemaking proceedings on Collective Bargaining Units in the Health Care Industry, Second Notice of Proposed Rulemaking, 53 Fed. Reg. 33900 (Sept. 1, 1988)), reprinted at 284 NLRB 1528, and Final Rule, 54 Red. Reg. 16336 (Apr. 21, 1989), reprinted at 284 NLRB 1580.

The latter includes evidence presented during the rulemaking process regarding units in acute care hospitals, and prior cases involving the type of unit sought or the type of health care facility in dispute. In its remand of *Park Manor*, supra, the Board specifically noted that if the employees sought to be excluded could not themselves constitute a separate unit, they must be included in the broader unit. 305 NLRB at 875, fn. 18; See also *Lifeline Mobile Medics*, 308 NLRB 1068 (1992).

Based upon the foregoing and the record as a whole, I find that a unit limited to those positions which the Petitioner seeks to include in the petitioned-for unit is not an appropriate unit for the purposes of collective bargaining. More particularly, I note the absence of evidence that a unit limited to those positions possesses that degree of functional distinction and autonomy to warrant a finding that they have a separate community of interest. However, I find that a unit which includes all of the Employer's employees, excluding clerical and professional employees, constitutes an appropriate unit for the purposes of collective bargaining. In reaching this conclusion, I note particularly that with the exception of the facilities maintenance employees, all employees share the common work goal of administering each client's plan, which requires them to perform similar duties vis-a-vis the clients, providing them with the opportunity to come into contact with each other in the course of their work day. Such commonality of duties and purpose compensates for the fact that their work is frequently performed at diverse times and locations, and under different supervision. Moreover, they are hourly paid with a common starting pay rate, are subject to common fringe benefits, working conditions, job qualifications, and personnel practices, and temporarily and permanently transfer between jobs. Although the record does not reflect the same degree of work-related contacts and interchange for the two facilities maintenance employees, their inclusion in the unit is warranted because they could not constitute a separate appropriate unit. *Park Manor*, supra, and *Lifeline Mobile Medics*, supra.

In contrast, other than their work-related contacts with the Employer's clients, the stipulated professional employees share none of the traditional community of interest factors which would warrant their inclusion in a unit of all other employees. More particularly, the physical therapists, occupational therapists, and speech & language pathologists have greater educational and work experience requirements, are subject to different pay, benefit and employment policies, and are considered by the Employer to be independent contractors rather than employees. The registered nurses and special education teachers have similarly greater and more unique job qualifications and apparently much higher rates of pay. Moreover, there is no evidence of the nature or degree of the work-related contacts of these professional employees with other employees in the unit. The factors noted above which support the

exclusion of the professional employees were all considered relevant by the Board in its rulemaking proceedings on collective-bargaining units in acute care hospitals to support the conclusion that professional employees constitute a separate appropriate unit in an acute care hospital setting, and thus support a finding that the Employer's professional employees similarly constitute a separate appropriate unit which would warrant their exclusion from the unit directed herein. *Hillhaven Convalescent Center of Delray Beach*, supra; *Lincoln Park Nursing and Convalescent Home, Inc.*, supra.

With regard to clerical employees, it is well established that the Board will exclude business office clerical employees from units in a non-acute care setting. *Lincoln Park Nursing and Convalescent Home, Inc.*, supra. In this regard, I note that the accounts payable clerk, the accounts receivable clerk, the bookkeeper payable/receivable clerk, the participant remuneration employee, and the resident benefits coordinator are clearly business office clericals. Moreover, I note that they all work at the STAR Center, share common supervision and working conditions, perform none of the same or similar hands-on client duties as other employees, do not interchange or transfer with other employees, and do not appear to have any regular or substantial work related contacts with other employees. Accordingly, I shall exclude these employees from the unit.

The participant benefits coordinator also appears to perform traditional business office clerical functions, although apparently at a different location than the other business office clericals. The remaining clerical employees, viz., receptionists and administrative assistants, appear to perform traditional office clerical functions at a number of different work locations. Moreover, there is no evidence in the record to conclude that these employees share a sufficient community of interest with unit employees to require their inclusion therein. See *St. Anthony Center*, 220 NLRB 1009, 1013 (1975). Rather, these employees appear to have more in common with the Employer's business office clerical employees discussed above. In this regard, I note that the Board has expanded the scope of employees it will include in a separate unit of business office clerical employees in the health care industry. See *CGE Caresystems, Inc.*, 328 NLRB No. 103 (1999); *Rhode Island Hospital*, 313 NLRB 343, 359-361 (1993). Accordingly, in light of the unique circumstances posed by the Employer's operations, the exclusion of the participant benefits coordinator, receptionists and administrative assistants from

the unit is warranted for the same reason that business office clericals are traditionally found to constitute a separate appropriate unit in the health care industry.⁵

In view of the above, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of section 9(b) of the Act:

All full-time and regular part-time assistant residential managers, support counselors, residential instructors, overnight support instructors, relief instructors, the job developer, job coaches, job site coaches, production instructors, program specialists, program coordinators, community services instructors, community support specialists, drivers, the shipping and receiving clerk, facilities maintenance employees, teaching assistants, the social worker intern, recreation employees, the respite supervisor, the respite coordinator, the respite counselor, respite support counselors, and respite relief counselors employed by the Employer at its Norwalk, Connecticut facility; but excluding the accounts payable clerk, the accounts receivable clerk, the bookkeeper payable/receivable clerk, the participant remuneration clerk, the resident benefits coordinator, the participant benefits coordinator, receptionists, administrative assistants, physical therapists, occupational therapists, speech & language pathologists, the nurse, the primary care nurses, special education teachers, the assistant director of employment services, the human resources specialist, and supervisors and guards as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit described above at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. These eligible employees shall vote whether or not they desire to be

⁵ The sole remaining employee in dispute is the assistant director of employment services. Given the nature of his job duties, this employee appears to be more closely aligned with management than with employees. See *Virginia Manufacturing Co.*, 311 NLRB 992 (1993). Accordingly, I shall exclude the assistant director of employment services from the unit directed herein.

represented for collective-bargaining purposes by United Food and Commercial Workers union, Local 371, AFL-CIO, CLC.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before June 26, 2000. No extension of time to file the list shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 3, 2000.

Dated at Hartford, Connecticut this 19th day of June, 2000.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
National Labor Relations Board
Region 34

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